



Patent  
Attorney's Docket No. 033018-070

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of	)	
F. Murphy Sprinkel, Jr. et al.	)	Group Art Unit: 3731
Application No.: 10/003,437	)	Examiner: D. P. Erez
Filed: December 6, 2001	)	Confirmation No.: 7405
For: RESISTIVE HEATER FORMED	)	
INSIDE A FLUID PASSAGE OF A	)	
FLUID VAPORIZING DEVICE	)	

**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

Commissioner for Patents  
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Alexandria, VA 22313-1450

Sir:

In response to the election of species requirement set forth in the September 22, 2005 Official Action, Applicants hereby elect with traverse Species I of the First Set and Species III of the Second Set. The claims readable on the elected species include generic claims 26, 29, 42, 43, 45 and 46 (as acknowledged on page 3 of the Official Action) and Claims 27, 40, 44, 48, 49 and 52.

The election of species requirement is traversed for the following reasons:

1. Initially, it should be noted that all of the species recited in the pending claims were presented in the originally filed method Claims 18-25 which were examined after Applicants elected the method claims in the response filed March 25, 2003. In the first Office Action on the merits, Claim 22 was indicated as being drawn to allowable subject matter and the remaining claims were rejected over prior art. In the Response filed January 23, 2004, Applicants presented the subject matter of Claim 22 as independent Claim 26, cancelled Claim 22 and added Claims 27-31 which depended from Claim 26. Claims 26-31 set forth the same features now

subject to the election of species requirement. Because the species recited in Claims 26-31 have already been examined, it clearly would not be an undue burden on the Examiner to examine all species identified in the September 22, 2005 Office Action. As such, withdrawal of the election of species requirement is respectfully requested.

2. Examination of Species I of Set 1 (which sets forth "**forming a thin resistive film by introducing a metal in solution, suspension or dispersion**") would be duplicative of the Examiner's search and examination efforts necessary to examine Species II , III and IV which set forth "**forming a thin resistive film by introducing a platinum salt** and heating the platinum salt", "**forming the thin resistive film by coating a metal powder, salt or oxide in solution, suspension or dispersion**, and heating the layer", and "**forming the thin resistive film by depositing** material by coating of the interior with **a metal salt solution**, and heating the passage to reduce the deposited material." Accordingly, because the search and examination of Species I, II, III and IV would not place an undue burden on the Examiner, withdrawal of the election of species requirement is respectfully requested.

3. Examination of Species III of Set 2 (which sets forth "**forming the fluid passage by forming a capillary sized fluid passage in a rectilinear body or multilayer body**") would be duplicative of the Examiner's search and examination efforts necessary to examine Species I , II and IV which set forth "**bonding three or more layers** together", "**machining a rectilinear block body**", and "forming a non-linear or tortuous passage in a **rectilinear body or multi-layer body**." Accordingly, because the search and examination of Species I, II, III and IV would not place an

undue burden on the Examiner, withdrawal of the election of species requirement is respectfully requested.

4. The election of species requirement at this stage of prosecution is unjustified in that all claim sets have been previously subject to examination on the merits. The present application has had six office actions on the merits. In the June 4, 2003 Office Action, Claims 18-21 and 23-25 were rejected over prior art and Claim 22 was indicated as allowable. In the November 19, 2003 Office Action, Claims 18-21, 23-25 and 32-37 were rejected over prior art and Claims 26-31 were allowed. In the April 7, 2004 Office Action, Claims 18-21, 23-25 and 32-37 were rejected over prior art and Claims 26-31 were allowed. In the August 23, 2004 Office Action, Claims 18-21, 23-25 and 32-37 were rejected over prior art and Claims 26-31 were allowed. In response to the Amendment filed November 22, 2004 wherein all claims except Claims 26-31 were cancelled, Claims 26-31 were rejected over newly cited prior art in the December 20, 2004 Office Action and again in the April 7, 2005 Office Action. Accordingly, because there are no features in the present claims which have not been examined in the six prior Office Actions mentioned above, it is respectfully submitted that the election of species requirement is unjustified and should be withdrawn.<sup>1</sup>

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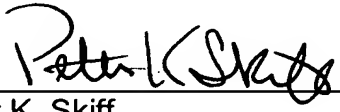
<sup>1</sup> Subsequent to the March 10, 2003 Office Action wherein restriction was required on the basis that method Claims 18-25 were classified in Class 392, subclass 398, it is noted that all prior art cited against the elected method claims in subsequent Office Actions is not listed on the accompanying 892 forms as classified in Class 392. Instead, U.S. Patent No. 5,519,191 ("Ketcham" cited in the November 19, 2003 Office Action) is listed on the 892 form as classified in Class 219, subclass 552, U.S. Patent No. 5,665,262 ("Hajaligol" cited in the April 7, 2004 and August 23, 2004 Office Actions) is listed on the 892 form as classified in Class 219, subclass 553, U.S. Patent No. 6,656,738 ("Vogel" cited in the December 20, 2004 and April 7, 2005 Office Actions) is listed on the 892 form as classified in Class 436, subclass 161, U.S. Patent No. 4,550,036 ("Ludwig" cited in the December 20, 2004 Office Action) is listed on the 892 form as classified in Class 427, subclass 161 and U.S. Patent No. 6,344,155 ("Kitahara" cited in the April 7, 2005 Office Action) is listed on the 892 form as classified in Class 252, subclass 502. Because the prior art cited against the method claims does not appear to

In summary, it is respectfully submitted the examination of all species identified in the election of species requirement will not place an undue burden on the Examiner since the features of Claims 26-31 were examined in six prior Office Actions. It is respectfully submitted that the previous examination of Claims 26-31, allowance thereof and subsequent rejection thereof establishes that the search and examination of all the species can be carried out without serious burden on the Examiner. As such, withdrawal of the election of species requirement is respectfully requested.

Respectfully submitted,

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Date: December 21, 2005

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